

IN THE SUPREME COURT OF IOWA  
NO. 15-1191

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SPENCER JAMES LUDMAN,

*Plaintiff-Appellee,*

v.

DAVENPORT ASSUMPTION HIGH SCHOOL.

*Defendant-Appellant.*

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On Appeal from the District Court for Scott County  
The Honorable Nancy S. Tabor

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***Amicus Curiae* Brief of the Iowa High School Athletic  
Association Supporting Appellant**

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Brian J. Humke, AT0003847  
Ryan G. Koopmans, AT0009366  
NYEMASTER GOODE, P.C.  
700 Walnut Street, Suite 1600  
Des Moines, Iowa 50309-3899  
Telephone: 515-283-3100  
Facsimile: 515-283-8045  
E-mail: [bjh@nyemaster.com](mailto:bjh@nyemaster.com)  
E-mail: [rkoopmans@nyemaster.com](mailto:rkoopmans@nyemaster.com)

*Attorneys for Amicus Curiae*

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## **IDENTITY AND INTEREST OF *AMICUS CURIAE***

The Iowa High School Athletic Association (IHSAA) is an Iowa nonprofit corporation that is responsible for administering boys' interscholastic athletic competition in Iowa, as delegated by the Iowa Department of Education under a 28E agreement. Its mission is to promote, develop, direct, protect, and regulate amateur interscholastic athletic relationships between member schools and to stimulate fair play, friendly rivalry, and good sportsmanship among contestants, schools, and communities throughout the state. The IHSAA also strives to minimize risk to participating students.

In that role (i.e., as a regulator of boys' high school athletics), the IHSAA has a significant interest in this case. But the IHSAA's interest goes beyond that. In addition to being a regulator, the IHSAA also hosts sporting events. Most notably, the IHSAA leases dozens of high school baseball facilities each year for the post-season tournaments that it hosts, including the state tournament. The sites for those events are selected in different ways, with district and sub-state games usually played

at the home field of one of the two participating schools (with record, seeding, or geography deciding which school). Many of these dugouts are not so different from the dugout in this case. Indeed, some of the fields that the IHSAA leases have dugouts that are completely or mostly open to the field, with Principal Park being a prime example.

Since 2005, the IHSAA has hosted the state baseball tournament finals at the Iowa Cubs' stadium. The dugouts at Principal Park are only partially fenced—partially, in that the dugout fence stands about chest high for a player who is standing up. This picture, taken by the *Le Mars Daily Sentinel* during this year's high school state tournament, shows the third-base dugout in the background:<sup>1</sup>

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<sup>1</sup> The picture is included in this article: Michael Haller, *Sailors Sink Hinton at State Tournament*, *Le Mars Daily Sentinel* (Jul. 27, 2015, available at <http://www.lemarssentinel.com/story/2216977.html>)



In August, the ISHAA agreed to keep the state baseball tournament at Principal Park through 2020.<sup>2</sup> As a result—and because the IHSAA hosts dozens of games each year at dozens of fields across the state—the IHSAA has a significant interest in this case.

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<sup>2</sup> See IHSAA, *State Tourney At Principal Park Thru 2020*, available at <http://www.iowa-baseball.com/aspx/news.aspx?id=465>

## ARGUMENT

### **I. The IHSAA and Iowa high schools have relied upon, and should be able to rely upon, this Court's teaching that foul balls are an inherent risk of baseball.**

In a negligence action involving a recreational activity, “the duty of care does not extend to natural risks of the activity, or, [in the alternative,] there is no breach of care when the injury results from a risk inherent to the activity.” *Anderson v. Webster City Cmty. Sch. Dist.*, 620 N.W.2d 263, 267 (Iowa 2000). Decades of high school sports have proceeded under that principle. Indeed, if eight random people could sit in judgment of every sports injury (or even a small fraction of them), then high school sports would be prohibitively expensive.

In this case, 18-year-old Spencer Ludman positioned himself in the opening of the team's dugout while his teammate was at bat. That teammate fouled a pitch down the first-base side and into the dugout opening where Ludman stood. Ludman was injured and is now suing Davenport Assumption (the host school) for negligence. He claims that dugouts should have no openings to the field. The jury found in Ludman's favor, but the main question on appeal is whether this case should have gone to the jury at all.

The answer is *no*, it shouldn't have, because the risk that a baseball player will be hit by a foul ball—even in the dugout—is a risk that is inherent in the game of baseball. We know that because this Court has already said so.

In *Dudley v. William Penn College*, 219 N.W.2d 484 (Iowa 1974), a player was hit by a foul ball while he sat on the team bench. The “dugout” area in that case wasn't dug out, and there was *no* protective screen. *Id.* at 485. The player sued the school, claiming that it was negligent: “The principal claim,” this Court wrote, “is that Penn and the coach should have protected players by a fence, a screened dugout, a greater distance, or some other method.” *Id.* at 486.

The district court and this Court rejected that argument *as a matter of law*. *Id.* at 486-87. Open dugouts, the Court explained, are a common practice in baseball (and always have been), and thus being hit by a foul ball is an inherent risk of the sport. *Id.* at 486.

Since then, this Court has had several opportunities to further clarify and characterize the *Dudley* foul-ball rule. In 2000,

the Court reiterated in *Anderson v. Webster City Community School District* that the risk of being hit by a foul ball while sitting on the bench is an inherent risk, and therefore the host of the game is not liable. *Anderson*, 620 N.W.2d at 267 (“We found the facts of the case [i.e., *Dudley*] revealed the only risk of harm that gave rise to the injury was the risk that inhered in the activity itself.”). Similarly, in this Court’s 2009 decision in *Sweeney v. City of Bettendorf*, 762 N.W.2d 873 (Iowa 2009), this Court, in describing *Dudley*, stated that it had “rejected” the player’s claim that the school “should have had dugouts or netting protecting the participants from the playing field.” *Id.* at 881.

So the rule is clear, and has been clear for some time: A school is not under a duty to protect players from foul balls, and (stated another way, but to the same end), a school does not act unreasonable—as a matter of law—if a baseball dugout is not screened or fenced. That type of clarity is a rare thing in tort cases. Usually, the common law works in broad strokes, creating rules that must be further applied by a jury on a case-by-case basis. But in this instance, the Court has spoken as a matter of

law. No lawyer—and certainly no lay person—could read this Court’s cases any other way.

That’s what makes the district court’s decision so concerning. If a rule, like the *Dudley* foul-ball rule, can be so easily ignored, then what rules can schools rely on? Precedent, it seems, would be worth very little—if anything at all.

It was therefore an error for the district court to send this case to the jury. And it is an error that, if not firmly and succinctly reversed by this Court, could have broad implications for Iowa high school baseball and Iowa sports in general. The IHSAA therefore respectfully requests that this Court reaffirm the foul-ball rule and reverse the judgment.

**II. By barring evidence of custom, the district court allowed the jury to reach its verdict in a vacuum.**

This case should not have gone to the jury under the foul-ball rule, so it should be reversed on that basis alone. But the district court’s treatment of custom is problematic for other sports cases (and all negligence actions, for that matter).

In a negligence action, the plaintiff must prove that the defendant’s actions or precautions against foreseeable harm were

unreasonable under the circumstances. *Anderson*, 620 N.W.2d at 267. Reasonableness is, to a large degree, in the eye of the beholder and thus jury verdicts are subject to wide variation. But that doesn't mean that the jury is left entirely to its own experiences to decide what's reasonable and what's not. "[P]roof by expert testimony, custom, or otherwise" can be used—and sometimes *must* be used—to give the jury the proper perspective on what the standard of care should be. *Dudley*, 219 N.W.2d at 486 (quoting *Schentzel v. Phila. Nat'l League Club*, 173 Pa.Super. 179, 186, 96 A.2d 181, 185 (1953)).

In this case, the district court precluded Davenport Assumption from showing the jury what is custom for high school baseball dugouts. That was error. While compliance with custom may not be dispositive, "*in most cases* reasonable prudence is in fact common prudence." *The T.J. Hooper*, 60 F.2d 737, 740 (2d Cir. 1932) (Hand, J.) (emphasis added). Thus, by precluding the jury from seeing photos of other Iowa high school dugouts, the district court deprived the jury of what is, arguably, the most probative evidence of the proper standard of care.

If that standard is applied to other sports cases (cases that should go to the jury), then high school sports will not be governed by the experience of school administrators, coaches, and governing bodies (like the Iowa High School Athletic Association). They will be governed solely by the experience of the eight random people who make their way into the jury box (some of whom may have little to no experience with the sport at issue). That kind of unpredictability would make insurance underwriting nearly impossible, which would make insurance cost prohibitive for many (if not most) Iowa schools.

Thus, in addition to reversing this case under the foul-ball rule, the Court should make clear that evidence of custom has a place in all negligence cases—especially those involving athletic activities.

Respectfully submitted,

/s/ Ryan G. Koopmans

Brian J. Humke, AT0003847

Ryan G. Koopmans, AT0009366

NYEMASTER GOODE, P.C.

700 Walnut Street, Suite 1600

Des Moines, Iowa 50309-3899

Telephone: 515-283-3100

E-mail: rkoopmans@nyemaster.com

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME  
LIMITATION, TYPEFACE REQUIREMENTS, AND  
TYPE-STYLE REQUIREMENTS**

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because it contains 1,530 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in Century Schoolbook 14 point font.

/s/ Ryan G. Koopmans AT0009366

**PROOF OF SERVICE AND CERTIFICATE OF FILING**

I hereby certify that on January 14, 2016, I electronically filed the foregoing with the Clerk of the Supreme Court of Iowa using the Iowa Electronic Document Management System, which will send notification to the parties of record.

/s/ Ryan G. Koopmans AT0009366